

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

- - -
CHRISTINA MONGELLI, :
 :
Plaintiff, : C.A. No. 05-359 SLR
 :
v. :
 :
RED CLAY CONSOLIDATED SCHOOL: :
DISTRICT BOARD OF EDUCATION,: :
et al., :
 :
Defendants. :
- - -

Deposition of JOHN KENNEDY, taken pursuant
to notice, before CAROL DISERAFINO, Professional
Reporter and Notary Public, duly authorized to
administer oaths, on TUESDAY, OCTOBER 17, 2006, at
10:15 a.m., held at the offices of the Red Clay
Consolidated School District, 4550 New Linden Hill
Road, Wilmington, Delaware. There being present:

A P P E A R A N C E S:

JOSEPH M. BERNSTEIN, ESQ.
800 North King Street, Ste. 302
Wilmington, Delaware 19801
on behalf of Plaintiff

BARRY M. WILLOUGHBY, ESQ.
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Fl.
Wilmington, Delaware 19801
on behalf of Defendants

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1 worked at Dickinson High School while you were
2 assistant principal.

3 A. If an incident occurred in a class or at
4 the school involving a student, the teacher would fill
5 out what's known as an SBR, Student Behavior Referral,
6 and submit it to the appropriate assistant principal.

7 Q. Now that would be by alphabet --

8 A. That's correct.

9 Q. -- depending on the student's name?

10 A. Their last name. That is correct.

11 Q. And the teachers I assume were given a
12 supply of these forms to fill out, or did they have to
13 go to the office to get one?

14 A. They were available in the teacher
15 mailroom.

16 Q. And it's just a form that you fill out.

17 A. That is correct.

18 Q. Okay. What happens to that form after
19 the teacher fills it out?

20 A. The teacher would put it in the
21 assistant principal's mailbox.

22 Q. Now where is that mailbox located?

23 A. In the same mailroom.

24 Q. In the teacher's lounge, or is there a

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1 A. Yes.

2 Q. And sometimes there would be behavioral
3 referral forms in there?

4 A. Yes.

5 Q. And can you tell me what kind of
6 priority those behavior referral forms got from your
7 own personal standpoint.

8 A. Student Behavior Referrals were a high
9 priority.

10 Q. So you would look at them every day?
11 MR. WILLOUGHBY: Objection. Asked and
12 answered.

13 MR. BERNSTEIN: Okay.

14 BY MR. BERNSTEIN:

15 Q. When you got a Student Behavior Referral
16 form, what did you do after you read it?

17 A. I would review it and then depending
18 upon what it was for talk to the student who was
19 identified, talk to student witnesses and/or talk to
20 the teacher who wrote it.

21 Q. So you would do kind of an informal
22 investigation into the merits of the complaint or
23 whatever it was that was being referred?

24 A. That is correct.

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1 out and complete? It looks like your initials down at
2 the bottom.

3 A. Yes. For Part III it says, "Check off
4 the administrative action used to resolve the problem
5 after the referral." So that would be a portion for
6 the administrator.

7 Q. And "OSS 3/8" means what?

8 A. Out-of-school suspension on March 8.

9 Q. Now an out-of-school suspension, is that
10 typically one day? Two days? Three days?

11 A. An out-of-school suspension could vary
12 in length. The limit on it was a total of ten days
13 and for Special Education students, the protocol at
14 John Dickinson High School at that time was a ten-day
15 maximum on out-of-school suspensions for Special
16 Education students.

17 Q. Okay. Now if I'm a student that gets
18 suspended, how do I get back in? What do I have to
19 do?

20 A. You come back on your return date.

21 Q. So a student who is suspended is given a
22 definite return date?

23 A. Yes. For example, this is 3/8. The
24 student would be allowed back on 3/9, or the next

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1 school day.

2 Q. So if I see OSS and there's just one
3 date there, 3/8, that would be the date the student
4 serves his suspension?

5 A. That should be the date of the
6 suspension.

7 Q. Okay. And if there's more than one
8 date, it would show on that form, if it was a two-day
9 suspension or a three-day suspension?

10 A. It is possible it would show on this
11 form. This form, as you can see there's a check-off
12 box area. It's possible it would just say
13 "suspension" and that would be it. This was what was
14 given back to the teacher and it was not what was
15 given to the student and the parent. So this was an
16 internal form.

17 Q. Okay. So the teacher would get back a
18 form showing what action was taken.

19 A. A carbon copy of this.

20 Q. Now could you read the top third, the
21 body, of the complaint against JW to yourself --

22 A. (Witness complies).

23 Q. -- where it starts "JW continues to be
24 extremely disruptive."

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1 students from her class, and that was an intervention
2 that was taken to provide her with assistance.

3 BY MR. BERNSTEIN:

4 Q. Was Jonathan White one of the students
5 who was moved?

6 A. No, he was not.

7 Q. Do you know the names of some -- are
8 records available to indicate the names of other
9 students who were moved and why they might have been
10 moved?

11 A. I don't know if records, such records,
12 are available. I remember one student's name was
13 Ebonie.

14 Q. First name or last name?

15 A. First name. I believe her name is
16 Ebonie Revelle.

17 Q. And do you recall what the particular
18 complaint --

19 MR. WILLOUGHBY: Excuse me. Can we
20 agree that any references to students will be kept
21 confidential?

22 MR. BERNSTEIN: Yes.

23 BY MR. BERNSTEIN:

24 Q. Do you recall the nature of the

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1 complaining about Jonathan doing, and so I offered to
2 just handle the entire situation myself. Teacher
3 doesn't have to bother with the write-up. I'll put
4 him right in in-school suspension for the day.

5 Q. So SOS means an in-school suspension.

6 A. That is correct.

7 Q. That would have been on March 31st?

8 A. That is correct.

9 (Deposition Exhibit Kennedy No. 9 marked
10 for identification).

11 BY MR. BERNSTEIN:

12 Q. I'm showing you what is marked Kennedy
13 No. 9. This is a Behavior Referral dated April the
14 26th, 2004 concerning Jonathan White and if you could
15 just read to yourself the behavior that's described.

16 A. (Witness complies). Yes.

17 Q. First question is, do you recall
18 receiving this report?

19 A. I do recall receiving it. Yes.

20 Q. Do you recall receiving it on or about
21 the date that's indicated, on April 26th?

22 A. I recall receiving it subsequent to
23 that.

24 Q. How subsequent, if you know.

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1 A. It was the following month.

2 Q. Following month?

3 A. It was not a month of time but it was in
4 May when Miss Mongelli came into my office and
5 reported a string of incidents to me at one time. At
6 that point in time I asked her to write for me a
7 narrative --

8 Well, first I asked her if she could
9 connect the incidents with particular dates. She said
10 she could. So I asked her to supply me with a written
11 narrative indicating what incident took place on what
12 date so that I could conduct my investigation.

13 The following day Miss Mongelli supplied
14 me with I want to say a stack -- I'm not sure how
15 many -- quite a few Student Behavior Referrals written
16 out and this would be one of them, indicating dates
17 with student behaviors, and I recall that quite well.

18 Q. So your testimony is even though Kennedy
19 No. 9 is dated April 26th, you didn't get it around
20 that time.

21 A. That is correct.

22 Q. Okay. And your testimony is that you
23 didn't get that until sometime in early May.

24 A. That is correct.

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1 Q. Okay. And you have a specific
2 recollection sitting here today of that?

3 A. I do.

4 MR. BERNSTEIN: Mark this as the next.

5 (Deposition Exhibit Kennedy No. 10
6 marked for identification).

7 BY MR. BERNSTEIN:

8 Q. Now just before I ask you questions
9 about this next exhibit, just a few moments ago you
10 stated that you asked Miss Mongelli to prepare a
11 written narrative --

12 A. Yes.

13 Q. -- of the incidents that she was
14 complaining to you about in early May or that came to
15 your attention in early May.

16 A. Yes.

17 Q. First, can you tell me the circumstances
18 of your contact with Miss Mongelli that uncovered
19 these incidents. In other words, how did it come
20 about that you learned Miss Mongelli was complaining
21 about a whole series of incidents that happened in
22 early May?

23 A. Miss Mongelli during the course of a
24 school day came into my office and said she wanted to

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1 talk about Jonathan White, that he had become an
2 ongoing problem. I began to take notes about what
3 Miss Mongelli was saying.

4 Q. What was her demeanor? Did she seem
5 calm? Upset?

6 A. She seemed calm.

7 Q. Okay.

8 A. And I began to take notes as to what she
9 said and then realized that what she was relating to
10 me was quite serious issues going back over a period
11 of time of I believe a couple of weeks. Based upon my
12 experience I knew it was gonna be important to be able
13 to tie specific incidents by Jonathan White to
14 specific dates, and that is why I asked her for --

15 I asked her if she knew what dates these
16 occurred. She said yes, she did. And so I asked her
17 if she could prepare a written narrative because I
18 knew that would be important, having it in writing.

19 Q. You mean kind of like a report or a memo
20 or something like that? Is that what you had in mind?

21 A. Anything that would indicate in writing
22 that Jonathan White did such and such on a particular
23 date in my class.

24 Q. Okay. And you indicated you got a

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1 series of Behavior Referrals in response to that
2 request.

3 A. The following day Miss Mongelli
4 presented me with more than several, quite a few, of
5 these Student Behavior Referrals, written out for each
6 particular incident, and this (indicating) I believe
7 would be one of them.

8 Q. Okay.

9 MR. WILLOUGHBY: "This" is Exhibit No.
10 10.

11 BY MR. BERNSTEIN:

12 Q. And did K-9 come to your attention
13 around the same time?

14 MR. WILLOUGHBY: Object. It's been
15 asked and answered. He already said it did.

16 MR. BERNSTEIN: Okay.

17 BY MR. BERNSTEIN:

18 Q. Other than the Behavior Referrals, which
19 you said K-10 is one of them, did you get anything
20 else in writing from Miss Mongelli other than Behavior
21 Referral slips?

22 A. Not that I recall. I recall receiving
23 just these Behavior Referral slips. More than these
24 two though.

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1 the student was no longer in her class after that
2 point in time, so I'm basing my recollection on that.

3 Q. Now just to kind of recap, your
4 testimony is that Exhibits K-9 through K-15, and you
5 can look at all of them --

6 A. Yes. I've looked at them all.

7 Q. -- Kennedy 9 through Kennedy 15 were all
8 given to you at the same time by Miss Mongelli?

9 A. Yes.

10 Q. And the latest date on these is May 7th.
11 Do you have a specific recollection whether you got
12 these May 7th or on some earlier date or some later
13 date?

14 A. I believe it was around that time. I do
15 know it was the day after Miss Mongelli came to my
16 office and reported all of these things to me and I
17 asked her for a narrative tying the events to dates.

18 Q. Okay. And when you got all these
19 reports as you say, what action did you take?

20 A. I began an investigation, interviewing
21 students in the class.

22 Q. Do you recall who you interviewed and
23 what those students said, if you have a recollection
24 today?

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1 A. I recall successfully getting two
2 students to indicate that they witnessed some of these
3 events take place.

4 Q. Were you satisfied based on your
5 investigation that these incidents actually occurred?

6 A. I was satisfied enough to take action.
7 I believe that some of them occurred enough and they
8 were of a degree of inappropriateness that I suspended
9 the student I believe for a lengthy period of time.

10 Q. And do you know when that suspension
11 occurred? If we could go back to Exhibit No. 1. Is
12 it listed on there?

13 A. I believe that the suspension for these
14 would have been 5/14, 5/17, 5/18, 5/19 and 5/20.

15 Q. Now those all have the notation
16 "suspended-out."

17 A. Correct.

18 Q. So that's an out-of-school suspension.

19 A. Correct.

20 Q. Now right below that, the next entry is
21 5/21, OA, Outside Agency, and that continues all the
22 way down the bottom of the page. Do you know what
23 that refers to?

24 A. Outside agency. The student is going to

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1 someplace that's not John Dickinson High School.

2 Q. Can you give me some examples of what
3 that might be, what that might refer to?

4 A. Usually an alternative school.

5 Q. Do you know whether or not Jonathan
6 White was removed from Dickinson following these May
7 incidents?

8 A. What occurred subsequent to this
9 five-day suspension ending on 5/20 was I engaged in a
10 conversation with Jonathan's mother in which we
11 mutually agreed that Jonathan would remain home for
12 the remainder of the school year.

13 Q. Do you know whether or not Jonathan
14 White returned to Dickinson for the 2004/2005 school
15 year?

16 A. I believe that he did return the
17 following school year.

18 Q. Do you know whether Jonathan White is
19 still a student at Dickinson?

20 A. I do not know that.

21 Q. You left in --

22 A. This is my second year in my current
23 position, so --

24 Q. Okay.

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1 MR. BERNSTEIN: Could we have this
2 marked as the next exhibit.

3 (Deposition Exhibit Kennedy No. 16
4 marked for identification).

5 BY MR. BERNSTEIN:

6 Q. Mr. Kennedy, I'm showing you a document
7 that's been marked as Kennedy 16 and it appears to be
8 a memorandum dated August 20, 2004 to Diane Dunmon
9 from yourself, John Kennedy.

10 A. That is correct.

11 Q. And this is a -- looks like a three-page
12 document.

13 A. Yes.

14 Q. Now is this a document that you
15 prepared?

16 A. Yes, it is.

17 Q. And sent to Miss Dunmon?

18 A. That is correct.

19 Q. Do you know the circumstances that led
20 up to your preparing this document?

21 A. I believe that it was requested from
22 district office, from Miss Dunmon's office, because of
23 some sort of claim that Miss Mongelli had placed.

24 Q. Do you have any specific recollection of

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1 any conversation with Miss Dunmon about preparing this
2 memo or why it was needed?

3 A. No, I do not.

4 Q. You were just asked to prepare a memo,
5 this memo?

6 A. I don't actually know if I was asked to
7 even prepare this memo. I think I took it upon myself
8 to -- there was a lot of information and I wanted to
9 in some way summarize it.

10 Q. Now obviously the incidents with
11 Mr. White occurred during the school year, roughly
12 March through May, 2004, and now it's August, 2004 and
13 you're preparing this memo; correct?

14 A. That is correct.

15 Q. Okay. What resources did you use to
16 complete this memo? Were there records that you
17 looked at? Was it your memory? Or just -- what did
18 you rely on?

19 A. I relied on the discipline file for
20 Jonathan White and my memory.

21 Q. And --

22 A. And my memory.

23 Q. And your memory. Okay.

24 The first entry is February 24th, 2004.

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1 Does that refresh your recollection about your earlier
2 testimony about students being removed from
3 Miss Mongelli's class?

4 A. Yes, it does. And the records for that
5 would have been with the educational diagnostician,
6 Ms. Kristen Norton.

7 Q. Now there's a reference there to a
8 letter dated 2/24/04.

9 A. Yes. I see that.

10 Q. Do you know what that refers to?

11 A. No, I do not.

12 Q. You don't have any recollection sitting
13 here today?

14 A. I think that that letter would refer to
15 the impact of the meeting about what students were
16 moved. In other words, Ebonie Revelle, Ernest Watson
17 and Courtney Deshield-Watts.

18 Q. Would that letter indicate --

19 MR. BERNSTEIN: Take a two-minute break?

20 THE WITNESS: Yeah.

21 (Break taken)

22 BY MR. BERNSTEIN:

23 Q. Mr. Kennedy, we're resuming after a
24 short break, and we were going through Kennedy Exhibit

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1 16 and I think we had already talked about the first
2 bullet point on this memo.

3 A. That is correct.

4 Q. And the next two bull --

5 Well, the next bullet point refers to
6 there's a date March 8, 2004 and that refers to a
7 one-day out-of-school suspension. And would it be
8 fair to say that you relied on the Notice of
9 Suspension for that date that we talked about earlier?

10 A. Yes.

11 Q. And would the same thing be true for the
12 next bullet point, April the 8th, 2004? There's
13 documentation for that suspension?

14 A. Yes.

15 Q. Now the next bullet point is dated
16 5/6/2004.

17 A. Yes.

18 Q. Now is there any particular reason you
19 picked that date?

20 A. That is the date that Ms. Mongelli came
21 to my office and reported the misconduct by Jonathan
22 White that had been taking place over the previous two
23 weeks or whatever the amount of time is.

24 Q. And your narrative here indicates on the

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1 second page, it's the fourth line down where it says,
2 quote, "The following day Miss Mongelli submitted
3 seven SBRs to me dated 5/7, 5/6, 5/5, 5/5, 5/4, 5/3
4 and 4/26."

5 A. That is correct.

6 Q. Okay. And that continues to describe
7 who you interviewed and summarizing what they said
8 with reference to a Mr. Butcher and a Mr. Battle. Do
9 you see that?

10 A. Yes, I do.

11 Q. And this also indicates that you met
12 with Mr. White on May 13th --

13 A. Yes.

14 Q. -- and gave him a five-day suspension.

15 A. That is correct.

16 Q. And there is also an indication on that
17 same bullet point at the top of the second page of
18 this memo that these incidents were reported to the
19 school resource officer, Detective Alex Nowell.

20 A. Yes. That is correct.

21 Q. Now what's a school resource officer?

22 A. School resource officer is the name
23 given to a State Police officer assigned to the high
24 school.

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1 A. Yes.

2 MR. BERNSTEIN: This is the next
3 exhibit.

4 (Deposition Exhibit Kennedy No. 19
5 marked for identification).

6 BY MR. BERNSTEIN:

7 Q. Kennedy 19 appears to be a Notice of
8 Suspension for five days, to return May 21st.

9 A. That is correct.

10 Q. Now is this the Notice of Suspension
11 that's related to the incidents that you testified
12 were reported to you in early May, May 6th?

13 A. Yes.

14 Q. Is that the connection?

15 A. Yes.

16 MR. BERNSTEIN: Have this marked has the
17 next exhibit.

18 (Deposition Exhibit Kennedy No. 20
19 marked for identification).

20 BY MR. BERNSTEIN:

21 Q. I'm showing you what's been marked as
22 Kennedy 20 and this appears to be a form titled
23 Manifestation Determination Worksheet and it's dated
24 June the 3rd, 2004. Can you tell me what would have

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1 occurred that would have led to the creation of this
2 document.

3 A. Yes. Jonathan White was a Special
4 Education student and when a Special Education student
5 approaches or reaches ten days of out-of-school
6 suspension, a manifestation meeting is required to
7 look at the behavior or behaviors and determine if
8 those behaviors are a manifestation of his disability.
9 If they are not, then it is appropriate for that
10 student to receive an out-of-school suspension as a
11 consequence. If it is a manifestation of his
12 disability, that's what the committee determines, then
13 such punishment, if you will, is not appropriate
14 because you're punishing someone for their disability.

15 Q. Is this kind of determination something
16 that happens automatically once they hit the ten-day
17 suspension?

18 A. Yes. It is supposed to. It's required.

19 Q. Are there any other circumstances when
20 this sort of determination will be made?

21 A. As far as I know it's utilized for
22 Special Education students as they reach or approach
23 the ten-day out-of-school suspension mark.

24 Q. Now there are a number of signatures at

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1 the bottom of that document. Are you familiar with
2 those signatures?

3 A. Yes, I am.

4 Q. Who is the top signature?

5 A. That's Dr. Janine Corello. She was the
6 school psychologist for Dickinson High School.

7 Q. Do you know if she's still the school
8 psychologist?

9 A. She I believe is employed by the school
10 district but not at that school.

11 Q. And the next name?

12 A. I believe that's Rachel Williams. She
13 was a Special Education teacher.

14 Q. And the next name?

15 A. Kristen Norton, and she was the ED, or
16 educational diagnostician, for Dickinson High School.

17 Q. And the last name?

18 A. Thomas Kalinowski was a general
19 education teacher at the school.

20 Q. Okay. Is there any particular reason
21 that the --

22 Do these committees have a particular
23 makeup or are there different people who man these
24 committees at different times or is it always the same

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1 people?

2 A. I believe it varies based upon
3 availability.

4 Q. Did you participate in that process?

5 A. I do not recall participating in it.

6 Q. Do you recall whether you were asked to
7 provide any input to these people in making their
8 decision?

9 A. I do not recall.

10 Q. Have you ever served on or participated
11 in a manifestation determination process?

12 A. Yes, I have.

13 Q. Okay. Based on your experience with
14 that process, what kind of things do you look at in
15 making this determination?

16 A. You look at the behavior that was
17 exhibited and the reasons why the student is
18 classified in Special Education and you see if there's
19 a causality there of the behavior being caused by the
20 disability.

21 Q. So you look at the behavior on the one
22 hand, the person's disability and see if there's a
23 connect or not.

24 A. Yes.

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1 Q. And if there's a determination that they
2 are connected, I take it the consequences for the
3 student would be less severe than if they're not
4 connected.

5 A. My understanding is that further
6 consequences would be prohibited of out-of-school
7 suspensions.

8 Q. So if a behavior is a manifestation of a
9 person's disability, even if they repeat it in the
10 future, you can't suspend them.

11 A. Not for that behavior, that's correct,
12 because it's a disability.

13 Q. No matter what it is?

14 A. I think that there are exceptions for
15 very extreme things like bringing a gun to school or
16 something.

17 Q. There are things people can get expelled
18 for no matter what their disability.

19 A. I believe even that is tricky. If it's
20 not a manifestation of their disability, then the
21 regular Code of Conduct applies. If it is, things get
22 tricky. I think that there are avenues that can be
23 taken that are rare to go straight to a judge or
24 something like that.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

- - -
CHRISTINA MONGELLI, :
 :
Plaintiff, : C.A. No. 05-359 SLR
 :
v. :
 :
RED CLAY CONSOLIDATED SCHOOL: :
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et al., :
 :
Defendants. :
- - -

Deposition of DIANE DUNMON, taken pursuant to notice, before CAROL DISERAFINO, Professional Reporter and Notary Public, duly authorized to administer oaths, on TUESDAY, OCTOBER 17, 2006, at 3:35 p.m., held at the offices of the Red Clay Consolidated School District, 4550 New Linden Hill Road, Wilmington, Delaware. There being present:

A P P E A R A N C E S:

JOSEPH M. BERNSTEIN, ESQ.
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on behalf of Defendants

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1 that I asked other people but I'm going to try to
2 maybe fill in some gaps that you might have some
3 knowledge about; okay?

4 A. Uh-huh.

5 Q. Let's start out with how it came to your
6 attention that Miss Mongelli did not have a Special Ed
7 emergency certificate.

8 A. In a conversation with Miss Davenport it
9 was brought to my attention.

10 Q. And do you know around when this would
11 have occurred? Time period?

12 A. I would say -- gosh ... I want to say
13 April to May time frame, but I don't know exactly in
14 the Spring.

15 Q. If we use a reference point, the
16 rescinded contract that was dated May the 12th, now --

17 MR. WILLOUGHBY: The rescission.

18 MR. BERNSTEIN: The rescinded contract.

19 MR. WILLOUGHBY: I'll let you finish the
20 question.

21 MR. BERNSTEIN: I'm using that as a
22 starting point.

23 MR. WILLOUGHBY: But not the word
24 "rescinded" written on it.

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1 MR. BERNSTEIN: Yeah.

2 THE WITNESS: Oh. Before it had that on
3 it.

4 BY MR. BERNSTEIN:

5 Q. Do you think -- that contract was signed
6 around May 12th? --

7 A. Yes.

8 Q. -- correct?

9 A. Uh-huh.

10 Q. -- by Miss Mongelli and by the school
11 district?

12 A. Yes.

13 Q. Would it be fair to say that that
14 contract would not have been signed if you knew on
15 May 12th or believed on May 12th that Miss Mongelli
16 did not have a certificate in Special Ed?

17 A. That's correct.

18 Q. You wouldn't have signed the contract;
19 correct?

20 A. Correct.

21 Q. So that knowledge logically would have
22 had to come to your attention after May 12th --

23 A. Yes.

24 Q. -- right?

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1 A. Uh-huh. Yes.

2 Q. And sometime between May 12th and June
3 16th, or --

4 A. I think that's correct.

5 Q. -- when it was rescinded?

6 A. Yes.

7 Q. And your understanding is that that was
8 brought to your attention by Miss Davenport?

9 A. Yes.

10 Q. Okay. Now prior to getting that
11 information from Miss Davenport, did you have any
12 conversations with Mr. Carmack about renewing or not
13 renewing Miss Mongelli's contract? --

14 A. Yes.

15 Q. -- before May 12th?

16 MR. WILLOUGHBY: Before May 12th?

17 MR. BERNSTEIN: Before May 12th.

18 THE WITNESS: I had a conversation with
19 Mr. Carmack. The specific date to place it before or
20 after would be difficult for me. My recollection is
21 that it would have been in that range, but I don't
22 know the exact date and I'm very sorry, but I don't.

23 BY MR. BERNSTEIN:

24 Q. Okay. Let's put the date aside for a

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1 moment.

2 A. Yes.

3 Q. Do you remember the substance of the
4 conversation?

5 A. I do.

6 Q. What was the substance?

7 A. Basically Mr. Carmack called my office
8 because he had been informed that Miss Mongelli was
9 given a regular contract rather than temporary, moved
10 from temporary to regular, and that he had a concern
11 because she was having difficulties in the classroom
12 and he believed that she was remaining on a temporary
13 contract which would have ended in June.

14 Q. So he called you because he found out
15 that her contract was being rolled over to the next
16 school year.

17 A. That's correct.

18 Q. Okay. And did he express some
19 displeasure with that?

20 A. He expressed puzzlement to a certain
21 extent as to why that had occurred and he expressed
22 concern because of the difficulties because of
23 classroom management issues that he mentioned at that
24 upper grade level in Special Education.

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1 Q. Do you know how it came about that
2 Miss Mongelli was offered a new contract for
3 2004/2005?

4 A. As I understand it Miss Davenport, being
5 aware that Special Education teachers, particularly at
6 the secondary level, are difficult to find, believed
7 that Miss Mongelli would be a person that we would
8 continue employment with and she believed that
9 Mr. Carmack at that time was pleased with her
10 performance.

11 Q. Now her testimony was she didn't get
12 anything from Carmack one way or the other in any form
13 of report saying I recommend this contract be extended
14 or I don't recommend --

15 A. Correct.

16 Q. -- this contract be extended.

17 A. Yes.

18 Q. Did you have any conversations with
19 Mr. Carmack to the effect of Well, if you didn't want
20 her back, why didn't you make a recommendation?

21 A. I did have a conversation with him. I
22 don't know that it was exactly that kind of wording.
23 He believed that in the absence of her name on his
24 roster, that we understood or that Debra understood

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1 that he did not expect that she would be returning in
2 the Fall.

3 Q. In your experience and -- well, let me
4 ask you this just to preface: Do you have a lot of
5 familiarity with these rosters the principals fill
6 out?

7 A. Yes.

8 Q. Do they cross your desk?

9 A. Yes.

10 Q. Is that unusual, to kind of just leave
11 somebody's name off the list and leave it to the
12 people who are getting the list to divine Well, that
13 person's name isn't on the list so they must not want
14 to re-hire them?

15 A. It is indeed unusual and I will say I've
16 had principals previously who automatically assumed
17 that all temporary contracts would disappear, so that
18 certainly happened before, but it is unusual for them
19 to think that -- a principal to believe that we'll
20 interpret that in that manner.

21 Q. You mean literally you would have to
22 look down the list and think to yourself Who is not on
23 the list; right?

24 A. Yes. Correct.

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1 Q. And then make another assumption from
2 the fact that their name isn't on the list as to what
3 the principal wants to do --

4 A. Correct.

5 Q. -- correct?

6 And wouldn't it be fair to say that most
7 of the time you either get some memo or some form, you
8 know, I recommend you re-hire these people or I
9 recommend you don't re-hire these people?

10 A. That would be accurate; however I would
11 also say that due to the proximity of that memorandum
12 going out with Mrs. Mongelli's hire, that made it a
13 little bit unusual because, as Debra pointed out,
14 we're doing those kind of decision-making in January
15 and February, and Miss Mongelli began as I recall
16 January 20.

17 Q. Well, don't you think then -- would it
18 be fair to say that because of the timing of that,
19 that it would even be more likely that if Mr. Carmack
20 didn't want Miss Mongelli back, he would take some
21 affirmative action?

22 MR. WILLOUGHBY: Likely you're saying?

23 MR. BERNSTEIN: More likely.

24 MR. WILLOUGHBY: You're asking her to

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1 testify to his state of mind.

2 THE WITNESS: I really can't answer
3 that.

4 MR. BERNSTEIN: All right. Fair enough.
5 BY MR. BERNSTEIN:

6 Q. Did Mr. Carmack in your conversations
7 with him flat out say I don't want Miss Mongelli back?

8 A. I honestly -- I really don't recall. I
9 don't know that those words were used.

10 Q. Did you take it that way?

11 A. That he did not want her to return to
12 that building?

13 Q. Yes.

14 A. Yes.

15 Q. Just based on his concerns, or anything
16 else?

17 A. No. Simply based on classroom
18 management. It was a very general conversation.

19 Q. Okay. Do you know what the problems
20 were with classroom management?

21 A. I do not.

22 Q. Did you ask Mr. Carmack?

23 A. I did not.

24 Q. Did he volunteer?

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1 A. As I recall, the conversation was about
2 the fact that Miss Mongelli had an emergency
3 certificate, that she was required to do an extensive
4 amount of course work, and that was the conversation.

5 Q. Well, you heard Miss Davenport's
6 testimony.

7 A. Yes.

8 Q. She said she told you she did not have a
9 certification.

10 A. No. I recall having a conversation
11 about the fact that Miss Mongelli's certificate either
12 was or would be -- I recall her saying it was an
13 emergency based upon her credential, and that would
14 not be unusual, to be able to ascertain that, whether
15 you had a document or not.

16 Q. Did Miss Davenport tell you, I don't
17 have any documentation that she has a certificate?

18 A. No. She did not say that to me.

19 Q. So would it be fair to say that your
20 concern from your conversation with Miss Davenport was
21 not so much about whether she had a certificate or not
22 but was about whether she was making progress and the
23 requirement such as Praxis II or taking courses to
24 become a regular certificate?

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1 A. My concern was that she meet the
2 requirements of the Delaware Code and the requirements
3 of the Department of Instruction which tell us that a
4 person on an emergency certificate must be working,
5 making attempts, to complete the required work, and
6 that was my concern.

7 Q. Now if you look at Davenport 9 there are
8 two paragraphs at the bottom that talk about the
9 school district's responsibility to either document
10 progress or lack of progress; is that correct?

11 A. Yes.

12 Q. And I asked Miss Davenport if she ever
13 submitted anything to the State Department of
14 Education.

15 MR. WILLOUGHBY: Object. Document
16 speaks for itself. I don't think it says what you're
17 saying.

18 MR. BERNSTEIN: All right. I'll go
19 back.

20 BY MR. BERNSTEIN:

21 Q. Miss Dunmon, what do you think those two
22 paragraphs mean?

23 A. The paragraph that begins "I am aware"
24 indicates that documentation needs to be sent to DOE

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1 the district level thinks it should be rescinded? Do
2 they notify the Board?

3 A. Yes. Because the Board took the action,
4 the Board has to undo the action and therefore the
5 name would have to go before the Board of Education in
6 order to be non-renewed or terminated.

7 Q. Do you know whether or not Miss Mongelli
8 was informed along the way after she signed the
9 contract to the effect that Miss Mongelli, there's a
10 question about your certificates. Can you show us
11 something, that you have a certificate or don't have a
12 certificate? Did that ever happen?

13 A. I cannot answer that question. Did I
14 ask that? No, I did not. Did Human Resources? I
15 don't know.

16 Q. You don't know whether they did or not?

17 A. I do not know.

18 Q. Did you ever review any of
19 Miss Mongelli's reports from classroom observations
20 about her teaching abilities?

21 A. No, I did not.

22 Q. Other than your conversations with
23 Mr. Carmack, did you have any knowledge of
24 Miss Mongelli's teaching abilities?

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1 A. No, I did not.

2 Q. Did you ever meet Miss Mongelli --

3 A. I had not.

4 Q. -- prior to having these conversations
5 with Mr. Carmack?

6 A. Not as I recall.

7 MR. BERNSTEIN: Okay. I think that's
8 it.

9 MR. WILLOUGHBY: I just have one
10 question. I want to make sure I understand this
11 right.

12 - - -

13 BY MR. WILLOUGHBY:

14 Q. Emergency certificate is issued only to
15 a particular school district; correct?

16 A. That's correct.

17 Q. So if Miss Mongelli had an emergency
18 certificate at Red Clay, she couldn't take that over
19 to Christina or Brandywine or somewhere else and use
20 it?

21 A. She could show it to them but they would
22 have to reapply.

23 Q. It's district by district specific,
24 though.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

- - -
CHRISTINA MONGELLI, :
 :
Plaintiff, : C.A. No. 05-359 SLR
 :
v. :
 :
RED CLAY CONSOLIDATED SCHOOL: :
DISTRICT BOARD OF EDUCATION, :
et al., :
 :
Defendants. :
- - -

Deposition of DEBRA DAVENPORT, taken
pursuant to notice, before CAROL DiSERAFINO,
Professional Reporter and Notary Public, duly
authorized to administer oaths, on TUESDAY,
OCTOBER 17, 2006, at 2:07 p.m., held at the offices of
the Red Clay Consolidated School District, 4550 New
Linden Hill Road, Wilmington, Delaware. There being
present:

A P P E A R A N C E S:

JOSEPH M. BERNSTEIN, ESQ.
800 North King Street, Ste. 302
Wilmington, Delaware 19801
on behalf of Plaintiff

BARRY M. WILLOUGHBY, ESQ.
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Fl.
Wilmington, Delaware 19801
on behalf of Defendants

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1 A. No, because when I look at something
2 like this, I'm counting noses to check how many units
3 there are and to see, make sure -- so the names don't
4 mean much to me really.

5 Q. Is it expected of a principal, let's say
6 you have teachers under temporary contracts teaching
7 at a school, to notify the district whether or not the
8 principal is recommending a new contract for those
9 teachers or not?

10 A. I'm sorry. Ask me again.

11 Q. Okay. In any given time there might be
12 teachers, let's say at John Dickinson High School, who
13 are teaching under temporary contracts and those
14 contracts as you said have a limited duration.

15 A. Correct.

16 Q. Now if the principal of that school
17 either wants to recommend that that person be carried
18 over to the next year or recommends that that person
19 not be carried over, is there some form of
20 communication that's sent to you or your office
21 telling them that?

22 A. Okay. I send a memo to principals
23 around January/beginning of February asking for --
24 giving them a list of teachers who are on temporary

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1 contracts and are not tenured, asking the status of
2 these particular educators, whether or not they should
3 continue employment or not.

4 Q. You send that memo out in January or so?

5 A. Yes.

6 Q. And when do you expect to get a
7 response?

8 A. Within -- by the beginning of February.

9 Q. I'm showing you Carmack No. 1 and that
10 looks like a response to just the type of memo you
11 described you sent out --

12 A. That's correct.

13 Q. -- is that right?

14 A. Yes.

15 Q. And that says here are the teachers
16 under temporary contract and there are some that are
17 recommended to be approved or carried over.

18 A. Yes.

19 Q. And I don't think -- in that particular
20 memo it looks like there's a recommendation that a
21 couple people not be rehired.

22 A. That's correct.

23 Q. Is there a recommendation on there that
24 any of the temporary people be rolled over to the next

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1 year or not, or does it just say here are the temps?

2 A. It just says here are the temps.

3 Q. Now would you expect something else --

4 A. Yes.

5 Q. -- from the principal about status of
6 the temps for the next year?

7 A. There would have been a notation of who
8 not to bring back.

9 Q. And if there had been --
10 So let me make sure I understand this.
11 People who are in the Temporary Contract category, you
12 would expect the principal to send you something, yes,
13 I recommend this person be rolled over to the next
14 year, or no, I don't?

15 A. Yes.

16 Q. And everybody would be covered with
17 either a "yes" or a "no."

18 A. Yes.

19 Q. And if you don't get that by a certain
20 date, what do you do?

21 A. It depends.

22 Q. Is there some place in your records
23 where those memos would exist?

24 A. Oh, yes.

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHRISTINA MONGELLI,)
)
 Plaintiff,) C.A. No. 05-359 SLR
v.)
)
RED CLAY CONSOLIDATED)
SCHOOL DISTRICT BOARD OF)
EDUCATION, et al.,)
)
 Defendants.)

Deposition of J. JANINE CARELLO, Ph.D.,
taken pursuant to notice at the offices of the
Red Clay Consolidated School District, 4550 New
Linden Hill Road, Wilmington, Delaware, beginning
at 9:10 a.m. on November 28, 2006, before Heather
M. Triozzi, Registered Professional Reporter,
Certified Shorthand Reporter, and Notary Public.

APPEARANCES:

JOSEPH M. BERNSTEIN, . ESQ.
LAW OFFICES OF JOSEPH M. BERNSTEIN
800 North King Street, Suite 302
Wilmington, Delaware 19899
for the Plaintiff

BARRY M. WILLOUGHBY, ESQ.
YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
1000 West Street, 17th Floor
The Brandywine Building
Wilmington, Delaware 19801
for the Defendants

Also Present:

Ms. Diane Dunmon

1 that's why it's checked as no?

2 A. Right. And since then, they've changed it
3 in the law.

4 Q. Okay.

5 A. Because everybody complained about it,
6 because you have a hard time explaining it at
7 meetings.

8 Q. Okay.

9 A. And then the third is the same thing, the
10 double negative.

11 Q. So, again, to restate the double negative
12 in a positive form, so it really means the
13 student's disability does impair his ability to
14 control the behavior that led to the discipline?

15 A. Correct. That's correct.

16 Q. So, and then under the law, as I
17 understand it, then basically if it's determined
18 that his conduct was a behavior of his
19 manifestation of his disability as is listed
20 here, you're not to hold him responsible in a
21 sense of depriving him of a free appropriate
22 education?

23 A. Correct.

24 Q. If it were something he were capable of

1 controlling, then that kind of discipline could
2 be a consequence?

3 A. Correct.

4 Q. Okay. So basically the purpose of this is
5 to decide whether or not you're going to hold the
6 child responsible in that sense or --

7 A. That's it.

8 Q. -- his behavior?

9 A. Right.

10 Q. And in this case, you determined, the
11 group of you, that the student unfortunately was
12 not able to control his behavior; is that
13 correct?

14 A. Correct.

15 Q. Okay.

16 MR. BERNSTEIN: All right. That
17 prompted some questions --

18 MR. WILLOUGHBY: I'm just thinking
19 if there's anything else.

20 MR. BERNSTEIN: -- whenever you're
21 done.

22 MR. WILLOUGHBY: I think I am done.
23 I think that's all have.

24 Mr. Bernstein said he may have a

1 Q. Is that right?

2 A. Correct.

3 Q. Okay. And when you make this
4 manifestation determination, the purpose of that
5 is to determine whether or not whatever
6 disciplinary action might be taken, that student
7 continues to receive appropriate education?

8 A. Correct.

9 Q. And that's the only purpose for this
10 determination?

11 A. Whether or not they continue to be
12 suspended or not suspended, correct, for that
13 same behavior.

14 Q. Okay. Well, if a student doesn't know
15 what he's doing is wrong, okay, and can't control
16 the behavior, does that play a role in whether
17 his suspension continues or not?

18 A. If it's determined that he can't control
19 it and it is a manifestation of his disability,
20 he will remain in school

21 Q. So you can't suspend that student?

22 A. Correct, by federal guidelines.

23 Q. Okay. What do you do with that student?

24 A. That's for the principal and assistant